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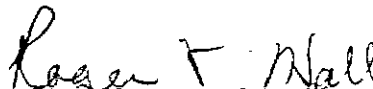
1987 FEB 20 PM 1:02

Office of the Secretary
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION

LEGISLATIVE RULE: State National Pollutant Discharge Elimination System (NPDES) for Mines and Minerals

The above titled rule has been modified as a result of comments by the Legislative Rule-Making Review Committee and the attached modifications have been incorporated into the above titled rule and filed in the Secretary of State's office on February 20, 1987.



Roger T. Hall
Administrator

NOTICE OF RULE MODIFICATION FILED

1997 FEB 20 PM 1:02

Re: Department of Energy
Division of Mines and Minerals
State NPDES Regulations, Series 20 STATE

The above-titled rules have been modified in the following particulars as a result of comments by the Legislative Rule-Making Review Committee:

1. 3.4.1 - The words "Commissioner and any" have been added prior to the word "designated," to bind both the Commissioner and his delegatee to the conflict of interest provisions.
2. 4.1 - The references to those incorporated parts of 40 C.F.R. §122.21 have been modified to except only subsections (c)(2), (f)(5), (g)(10), (i), (j), (l) and (n).
3. 4.3.1.1 - The typographical error was corrected to change "designed" to "designated."
4. 6.2.1.3 - The words "sufficiently mitigate" were deleted and replaced with the word "correct."
5. 6.2.1.6 - The word "may" was changed to "shall."
6. 6.2.1.7 - The word "may" was changed to "shall"; the word "or" was changed to "and"; and the word "mitigate" was changed to "correct."
7. 8.2 - The phrase "last sentence" was modified to read "last four sentences."
8. CFR Exhibits - Appropriate changes have been made in the accompanying CFR Exhibits to correspond to rules text modifications.

PREAMBLE TO THE
PROPOSED RULES OF THE DEPARTMENT OF ENERGY,
STATE NPDES REGULATIONS FOR MINES AND MINERALS

LEGAL AUTHORITY

The regulations described in this notice are proposed by the Commissioner of the Department of Energy under the authority of Chapters 22 and 22A of The West Virginia Energy Act.

BACKGROUND

On April 12, 1985, the West Virginia Legislature passed The West Virginia Energy Act making it effective 90 days from passage (July 11, 1985). The Act is codified at W. Va. Code §§22-1-1 through 22-13-3; 22A-1-1 through 22A-6-6; and 22B-1-1 through 22B-4-13 (1985 Repl.Vol.). In passing The West Virginia Energy Act, the Legislature found that there was a need for the consolidation of regulatory power under a single department of state government to, among other things, achieve "more efficient administration, avoid unnecessary delays in permitting and other matters, provide better and more expeditious enforcement and application of environmental and safety laws" with a view towards making the state's mineral development industry "more competitive with that in other energy producing states." W. Va. Code §22-1-2 (1985 Repl.Vol.).

In that Act, the Legislature found the public policy of the state to be to foster, encourage and promote the exploration for and the development, production, utilization and conservation of coal, oil and gas and other mineral resources of this state and at the same time protect the environment and enhance safety

and health in these vital industries. W. Va. Code §22-1-2 (1985 Repl. Vol.). To achieve this end, the Department of Energy was created to consolidate rulemaking and permit issuance requirements in these industries.

The West Virginia Energy Act vested exclusive jurisdiction in the Department of Energy over the issuance of regulations or any and all permits and other governmental authorizations required, or to be required, for all matters pertaining to coal and other mineral resources as are called for pursuant to West Virginia Code Chapter 20, Article 5 and West Virginia Code Chapter 20, Article 5A with regard to water pollution control for facilities involved in the exploration, development, production, recovery, utilization and preparation of coal and other mineral resources.

The Department jurisdiction over energy resources is primarily established by W. Va. Code §22-1-16 (1985 Repl. Vol.):

Except as otherwise expressly provided in this chapter or in chapters twenty-two-a or twenty-two-b of this code, jurisdiction over the issuance of regulations, or any and all permits and other governmental authorizations required or to be required in all matters pertaining to the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources in this state, including all safety, conservation, land, water, waste disposal, reclamation and environmental regulations, permits and authorizations called for pursuant to article 5, 5-a, 5-d, and 5-f, chapter twenty of this code, and the enforcement and implementation thereof is vested exclusively in the Department of Energy. The Department of Energy is hereby designated as the lead regulatory agency for this state for all purposes of federal legislation relating to such activities.

In addition to the general jurisdictional authorization to the Department of Energy, W. Va. Code §22A-3-40 also specifically transfers all powers, duties and responsibilities of the Department of Natural Resources to the Commissioner of the Department of Energy with respect to the NPDES program for coal mines, preparation plants and refuse and waste therefrom under Chapter 20, Article 5A of the Code, including related sewage treatment facilities and bath houses. The Commissioner is given the authority to issue, amend, transfer, renew or revoke all required permits for such facilities. This section has the effect of transferring authority for NPDES for coal mining facilities from the Department of Natural Resources to the Department of Energy, thereby eliminating any duplication of jurisdiction as between the two agencies over such point sources. The authority of the Commissioner under these statutory provisions becomes effective upon a proclamation by the Governor stating that the final approval of the partial transfer of the NPDES system to the DOE has been given by the Administrator of the United States Environmental Protection Agency. The promulgation of these proposed rules is the first step in that process.

These state NPDES rules for the mines and minerals industry, designated Series 20, are meant to supercede the former regulations of the DNR and the State Water Resources Board with respect to such facilities. These rules deal with NPDES requirements necessary for the delegation of that program from the United States Environmental Protection Agency to the Department of Energy as outlined in 40 C.F.R. Part 123.

Similar NPDES regulations of the State Water Resources Board and the DNR Division of Reclamation were continued in effect by The West Virginia Energy Act until the Department of Energy promulgates superceding regulations. These proposed regulations are part of the transition from the Reclamation Division of the DNR to the Department of Energy for purposes of permit issuance.

The proposed regulations essentially incorporate by reference all of the EPA regulations which are necessary to achieve delegation of the NPDES program for the mines and minerals industry. Some provisions, which are fully set out in the text of the proposed rules, differ from the federal regulations or are in addition to those federal regulations, where state law requires deviations or the state prefers to include clarifying language. In addition, some provisions have been included which increase the flexibility of the Commissioner in administering the permit program to take account of fact-specific cases or to deal with areas of regulatory control or permit conditions which have no counterpart EPA regulations, but which serve to improve the state program.

SOLICITATION OF COMMENTS

The Department of Energy invites public participation in this rulemaking and requests comments on the proposed rules discussed in this notice. The agency asks that comments be as specific as possible and that suggested revisions or corrections

be supported by data or example. Comments should identify the section number of the proposed rule to which they are directed.

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF ENERGY
DIVISION OF MINES AND MINERALS
CHAPTER 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
SERIES 20

Title: State National Pollutant Discharge Elimination System
(NPDES) for Mines and Minerals

EXHIBIT OF CODE OF FEDERAL REGULATIONS PROVISIONS
INCORPORATED BY REFERENCE

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF ENERGY
DIVISION OF MINES AND MINERALS
CHAPTER 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
SERIES 20

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WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF ENERGY
DIVISION OF MINES AND MINERALS
CHAPTER 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
SERIES 20

FILED
1987 FEB 20 PM 1:03
SECRETARY OF STATE

Title: State National Pollutant Discharge Elimination System (NPDES) for Mines and Minerals

Section 1. General

1.1 Scope - This legislative rule establishes requirements pertaining to the State National Pollutant Discharge Elimination System (NPDES) Program as it relates to the exploration, development, production, preparation, storage and recovery of coal and other mineral resources, other than oil and gas, and all refuse and waste therefrom in this state.

1.2 Authority and Related Code Citation(s) - W.Va. Code §22-1-5; 22-1-8; 22-1-15; 22-1-16; 22A-1A-2; 22A-1A-4; 22A-3-40; 20-5A-1 through 24.

1.3 Filing Date -

1.4 Effective Date - This rule shall become effective upon the date of the proclamation by the Governor pursuant to W. Va. Code §22-1-20 stating that final approval of the transfer of this program has been given by the United States Environmental Protection Agency or that such final approval is not necessary.

1.5 Former Rule Superseded - This legislative rule supersedes West Virginia Administrative Regulations, "State Water Resources Board, Chapter 20-5A, Series II Requirements Governing the State National Pollutant Discharge Elimination System (NPDES) Program," in effect on January 6, 1986 and the Department of Natural Resources' Legislative Rules, Chapter 20, Article 1, Series 7 (1986) (WV/NPDES) in effect on April 24, 1986, to the extent that such rules pertain to the exploration, development, production, preparation and recovery of coal, and other mineral resources in this state. However, those rules are superceded only as to NPDES requirements and not as to other permits which may be required pursuant to W.Va. Code §20-5A-5.

1.6 Incorporation by Reference - All incorporations by reference in these regulations of federal regulations shall refer to those federal provisions in effect as of November 1, 1986. A copy of the incorporated regulations was filed with the Secretary of State on November 26, 1986, and may also be found in the Code of Federal Regulations.

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
Series 20, Sec. 2

Section 2. Definitions

Unless the context in which used clearly requires a different meaning, the definitions set forth in W.Va. Code §§20-5A-2, 22A-1A-1, 22A-3-3, 22A-4-2, 22A-5-1, 22A-6-1 and 22-1-3 shall apply to this rule along with the following definitions. In the event of any conflict in the definitions between W.Va. Code §20-5A-2 and W.Va. Code, Chapter 22A, and 22-1-3, the definitions in W.Va. Code, Chapter 22A and 22-1-3 shall control. The definitions contained in 40 C.F.R. §122.2 are hereby incorporated by reference. Each time the word "Director," "EPA" or "Administrator" or "Regional Administrator" appears in the federal regulations, it shall be construed to mean the Commissioner, or his authorized delegatee, of the Department of Energy unless the context clearly indicates the term to stand as "EPA" or is specified in these rules to be otherwise. "Commissioner" shall mean the Commissioner of the Department of Energy or his authorized delegatee. In the event of any conflict in the definitions between 40 C.F.R. §122.2 and the W.Va. Code, the W.Va. Code shall control.

2.1 "Waters of the United States" shall be construed to mean "waters" of the State as defined in W.Va. Code §20-5A-2(e).

2.2 "Facility or Activity" shall be construed to be limited to those facilities and activities subject to the jurisdiction of the Commissioner pursuant to W.Va. Code Chapter 22A, as described in Section 1.1.

2.3 "State" shall mean West Virginia.

2.4 "Clean Water Act (CWA)" shall mean the Federal Water Pollution Control Act, Public Law 92-500, as amended, 33 U.S.C. 1251 et seq.

2.5 "Real Time Water Quality Control" means the establishment of an effluent limitation which is based upon a stream flow to discharge flow ratio, determined by the known characteristics of the stream and the discharge.

Section 3. Permits

3.1 Permit Requirement - No person shall discharge pollutants from a point source subject to these regulations into surface waters of the State except as authorized pursuant to a WV/NPDES permit, general permit or combined surface mining permit issued by the Department of Energy under these regulations. A

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Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
Series 20, Sec. 3.4

3.4 Conflict of Interest

3.4.1 The Commissioner and any designated permit-issuing authority under these regulations shall not be a person who receives or has during the previous two (2) years received, a significant portion of income directly or indirectly from permit holders or applicants for a WV/NPDES permit under these regulations or the NPDES regulations of any other agency of this State.

3.4.2 For the purposes of this section:

"Significant portion of income" means ten (10) percent or more of gross personal income for a calendar year, except that it means fifty (50) percent or more of gross personal income for a calendar year if the recipient is over sixty (60) years of age and is receiving that portion under retirement, pension, or similar arrangement.

"Permit holders or applicants for a permit" does not include any university or college operated by the State or any department or agency of the State.

"Income" includes retirement benefits, consultant fees, and stock dividends.

For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

Section 4. Permit Application Requirements

The following provisions of 40 C.F.R. are hereby incorporated by reference:

4.1. Application for a permit - 40 C.F.R. §122.21, except §122.21(c)(2), (f)(5), (g)(10), (i), (j), (l) and (n); and except that applications for permits for new discharges and for permit reissuance shall be submitted at least 120 days prior to the commencement of construction of a new source and at least 120 days before the expiration date of an existing WV/NPDES or NPDES permit. The applicant shall provide a listing of all construction approvals or permits obtained or applied for under W.Va. Code, Chapter 20, Article 5A.

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Leg. Rule, 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
Series 20, Sec. 4.1.a.

4.1.a. The topographic map required by §122.21(f)(7), however, shall extend 1,000 feet beyond the property boundaries of the source.

4.1.b. Requirements in §122.21 for Group I and Group II storm water sources are not adopted. See subsection 4.3.

4.1.c. The Commissioner reserves the right to require the owner of a facility or activity to obtain a WV/NPDES permit where there is no responsible operator or when the operator has failed to obtain a permit or the permit has been terminated, revoked or suspended, but only after notice to both the owner and the operator.

4.1.d. In describing outfall locations for haulroads and on-bench drainage control, the outfall location shall be the lowest downstream discharge point where water leaving the permit area enters the stream.

4.1.e. The testing required by §122.21(g)(7)(i)(A) for BOD₅, COD, TOC and ammonia are waived if sewage or bath house wastewater is not a part of the effluent.

4.2 Signatories to permit applications and reports -
40 C.F.R. §122.22;

4.3 Separate storm sewers -

4.3.1 "Separate storm sewer" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and which is either:

4.3.1.1 Located in an urbanized area as designated by the U.S. Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1974); or

4.3.1.2 Not located in an urbanized area but is designated under Section 4.3.5.

4.3.2 Except as provided in Section 4.3.3, a conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff which is not located in an urbanized area and has not been designated by the Commissioner under Section 4.3.5 is not considered a point source and is not subject to the provisions of this series.

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
Series 20, Sec. 4.3.3

4.3.3 Conveyances which discharge process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from land or facilities used for industrial or commercial activities, into waters of the State or into separate storm sewers are point sources subject to the requirements of this series but are not separate storm sewers for purposes of this section. As used in this paragraph, "wastes" does not include sand, silt and gravel.

4.3.4 Whether a system of conveyances is or is not a separate storm sewer for purposes of this section shall have no bearing on whether the system is eligible for funding under Title II of CWA.

4.3.5 Case-by-case designation of separate storm sewers. The Commissioner may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category or other point source category; or when:

4.3.5.1 A Water Quality Management plan under Section 208 of CWA which contains requirements applicable to such point sources is approved; or

4.3.5.2 The Commissioner determines that a storm sewer is a significant contributor of pollution to the waters of the State. In making this determination the Commissioner shall consider the following factors:

4.3.5.2.1 The location of the discharge with respect to waters of the State;

4.3.5.2.2 The size of the discharge;

4.3.5.2.3 The quantity and nature of the pollutants reaching waters of the State; and

4.3.5.2.4 Other relevant factors.

4.4 General permits - 40 C.F.R. §122.28, except §122.28(b)(1), last sentence, in which the phrase "and §124.58 for EPA" shall be deleted; and except that §122.28(b)(2)(F)(ii) shall apply to DOE-issued general permits; §122.28(c) shall also be deleted.

Department of Energy
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Leg. Rule, 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
Series 20, Sec. 4.5

4.5 New sources and new dischargers - 40 C.F.R.
§122.29;

Section 5. Permit Conditions

The following provisions of 40 C.F.R. are hereby incorporated by reference:

5.1 Conditions applicable to all permits - 40 C.F.R. §122.41, except §122.41(a)(2), §122.41(i), §122.41(j)(5), §122.41(k)(2), and §122.41(l)(3);

5.2 Additional conditions applicable to specified categories of NPDES permits - 40 C.F.R. §122.42(a);

5.3 Inspection and entry - Whenever required to carry out the objectives of these regulations, the Commissioner or his authorized representative, upon presentation of credentials or other documents as may be required by law:

5.3.1 Shall have a right of entry to, upon or through any premises in which an effluent source is located or in which any records required to be maintained by these regulations are located, and

5.3.2 May at reasonable times have access to and copy any records, inspect any monitoring equipment or method required and sample and monitor or analyze any streams in the area as well as sample and monitor and analyze any effluents which the permittee is required to sample.

5.4 Transfer of permits - 40 C.F.R. §122.61.

Section 6. Establishing Permit Conditions

The following provisions of 40 C.F.R. are hereby incorporated by reference:

6.1 Establishing permit conditions - 40 C.F.R. §122.43;

6.2 Establishing limitations, standards, and other permit conditions - 40 C.F.R. §122.44, except §122.44(j), (n), (o) and (p); however, an applicant may qualify for alternate effluent limitations by making an adequate demonstration to the

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Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
Series 20, Sec. 6.2

Commissioner pursuant to Section 8, Series I of the Administrative Regulations of the State Water Resources Board.

6.2.1 Nothing in this section precludes the application of Real Time Water Quality Control in achieving water quality standards. Such real time management may be used where water quality standards cannot be achieved after installation of treatment technology to comply with established technology-based effluent limits. In establishing any such water quality-based effluent limitation the following shall apply:

6.2.1.1 Water quality-based effluent limitations may be utilized only where violations of water quality standards are identified or projected as likely to occur as the result of the permitted discharge.

6.2.1.2 Permit requirements for monitoring effluent toxicity may be imposed only where there is a significant likelihood of toxic effects to biota in the receiving water.

6.2.1.3 Permit requirements for monitoring effluent toxicity shall not be imposed where toxic effects are present but there is a significant likelihood that compliance with technology-based requirements will correct the effect; however, the Commissioner may require chemical and toxicity testing after installation of the treatment technology and may reopen the permit to incorporate additional limitations if needed to meet water quality standards.

6.2.1.4 Effluent toxicity monitoring requirements should be used only where effluents are complex or where combined effects of multiple discharges are of concern.

6.2.1.5 In making a determination to require effluent toxicity monitoring as a permit condition, the Commissioner shall take into account the degree of impact, the complexity and variability of the discharge, the water body type and hydrology, the potential for human health impact, the amount of existing data, the level of certainty desired in water quality assessment, the appropriateness of the toxicity monitoring technique for use in protection and monitoring water quality, other sources of pollutants, and the ecology of the receiving stream.

6.2.1.6 If upon the basis of such effluent toxicity monitoring, it is determined that there is a significant likelihood of toxic effects to biota in the receiving water, then the

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
Series 20, Sec. 6.2.1.6

Commissioner shall require the permittee to conduct a toxicity reduction evaluation.

6.2.1.7 If, as a result of such toxicity reduction evaluation, specific pollutants are identified as causing such toxic effects to biota in the receiving water, the permit shall be modified to limit such pollutants and other appropriate action taken to correct the toxic effects.

6.2.1.8 All biological or other toxicity monitoring procedures required in a permit shall be approved pursuant to 40 C.F.R. Part 136 or, unless the permittee agrees otherwise, be based upon studies establishing that such analyses have been properly validated by scientifically accepted interlaboratory procedures.

6.3 Calculating NPDES permit conditions - 40 C.F.R. §122.45, except §122.45(b)(1) and §122.45(b)(2)(ii)(A)(2);

6.4 Duration of permits - 40 C.F.R. §122.46;

6.5 Schedules of compliance - 40 C.F.R. §122.47;

6.5.1 Schedules of compliance may also be granted pursuant to W.Va. Code §20-5A-7, provided they do not violate Section 301 of the federal Clean Water Act.

6.6 Requirements for recording and reporting of monitoring results - 40 C.F.R. §122.48;

6.6.1 Inherent analytical variabilities in 40 C.F.R. Part 136 test procedures are acknowledged. Exceedances of effluent limitations established in a permit will not be deemed permit violations unless the reported value exceeds the effluent limitation by an amount greater than the variability recognized in applicable sampling and analytical procedures; however, all actual test values shall be reported on the DMR's.

6.7 Disposal of pollutants into wells, into publicly owned treatment works or by land application - 40 C.F.R. §122.50.

Section 7. Modification, Revocation and Reissuance, and Termination of Permits

The following provisions of 40 C.F.R. are hereby incorporated by reference:

Department of Energy
Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
Series 20, Sec. 7.1

7.1 Modification or revocation and reissuance of permits - 40 C.F.R. §122.62;

7.2 Minor modifications of permits - 40 C.F.R. §122.63; the following shall also constitute minor modifications:

7.2.1 Allow disposal system equipment substitution, when the substituted equipment would not alter the degree of treatment required by the permit.

7.2.2 Allow rerouting of discharging lines, when the rerouted line would not discharge to a different receiving stream and would not require new or different permit conditions.

7.2.3 Allow relocation of elements of treatment facilities or disposal systems, due to topography or equipment failures.

7.3 Termination of permits - 40 C.F.R. §122.64;

7.4 40 C.F.R. §122,

Appendix A - NPDES Primary Industry Categories

Appendix D - NPDES Permit Application Testing Requirements (including tables)

Section 8. Procedures for Permit Issuance

The following provisions of 40 C.F.R. are hereby incorporated by reference:

8.1 Application for a permit - 40 C.F.R. §124.3;

8.2 Modification, revocation and reissuance, or termination of permits - 40 C.F.R. §124.5, except for the last four sentences in §124.5(b) and except §124.5(f) and (g);

8.3 Draft permits - 40 C.F.R. §124.6, except for the last two sentences of §124.6(e);

8.4 Statement of basis - 40 C.F.R. §124.7;

8.5 Fact sheet - 40 C.F.R. §124.8;

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Division of Mines and Minerals
Leg. Rule, 22-1, 22A-1, 22A-1A, 22A-3, 22A-4,
22A-5, 22A-6 and 20-5A
Series 20, Sec. 8.6

8.6 Administrative record for draft permits - 40
C.F.R. §124.9;

8.7 Public notice of permit actions and public comment
period - 40 C.F.R. §124.10, except §124.10(a)(i), (iv), and (v);
§124.10(c)(1)(iv) as it applies to the National Marine Fisheries
Service; §124.10(c)(1)(vi) and (vii), and §124.10(d)(1)(viii) and
(d)(2)(iv);

8.8 Public comments and requests for public hearings -
40 C.F.R. §124.11;

8.9 Public hearings, - 40 C.F.R. §124.12, except
§124.12(a)(3) and (e);

8.10 Reopening of the public comment period - 40 C.F.R.
§124.14, except §124.14(a)(3);

8.11 Issuance and effective date of permit - 40 C.F.R.
§124.15(a). A final permit shall not become effective less than
30 days after the date of issuance of the final permit unless an
earlier date is requested by the permittee. No permit may be
issued where the EPA Regional Administrator has timely objected
to the issuance of the permit specifying the reason therefor
pursuant to 40 C.F.R. §123.44(c) and such objection has not been
corrected in the final permit.

8.12 Response to comments - 40 C.F.R. §124.17;

8.13 Administrative record for final permit -
40 C.F.R. §124.18;

8.14 Computation of time - 40 C.F.R. §124.20;

8.15 Timing for processing variances - 40 C.F.R.
§124.51(b);

8.16 Permits required on a case-by-case basis -
40 C.F.R. §124.52;

8.17 Fact sheets - 40 C.F.R. §124.56, except
§124.56(d);

8.18 Public notice for thermal variances - 40 C.F.R.
§124.57(a);

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8.19 Conditions requested by the Corps of Engineers and other government agencies - 40 C.F.R. §124.59;

8.20 Decision on variances - 40 C.F.R. §124.62;

8.21 Emergency permit issuance and modifications - If an emergency is determined by the Commissioner to exist in which a discharge constitutes a clear present and immediate danger to public health or public water supplies, the provisions of this subsection will apply. The Commissioner may either immediately issue a temporary emergency permit or modify an existing permit without prior public notice or preparation of a draft permit, or, shorten the time period for public notice to no less than ten (10) days. If such immediate action is taken, the Commissioner shall, at the same time, follow the usual procedures for permit modifications and issuance so that the public may comment. The permit or modification may be altered or revoked based upon the public comment received. All such immediate modifications or temporary emergency permits shall be for as brief a period as possible and no more than six (6) months.

8.22 Appeals - For WV/NPDES permits, appeals may be taken to the State Water Resources Board pursuant to W.Va. Code §20-5A-15;

8.23 NPDES permits issued by other agencies.

8.23.1 The Commissioner shall administer and enforce all effective WV/NPDES, Article 5 or Article 5A permits relating to point sources subject to these regulations which were issued by other State agencies or EPA prior to the effective date of these regulations.

8.23.2 In the event of a conflict between an adopted NPDES permit and a WV/NPDES permit Article 5 or Article 5A permit the more stringent provisions shall apply.

8.23.3 The Commissioner may adopt as WV/NPDES permits issued under Article 5A all NPDES permits within the scope of Section 1.1 issued by the Regional Administrator which are transferred by the Regional Administrator and accepted by the Commissioner. Acceptance of an NPDES permit from the Regional Administrator shall not supercede any permit previously issued under Article 5A. All provisions of both permits shall be in force, except that, in the event of a conflict, the more stringent provisions shall apply. All permits relating to the same facility shall be deemed consolidated and considered as a single

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permit for the purposes of reporting, administration and enforcement.

8.23.4 Unexpired or administratively extended permits previously issued under Article 5A shall be void whenever a new WV/NPDES permit is made effective for the same facility. Any unexpired NPDES permit issued by the EPA shall not be enforceable by the Commissioner upon the effective date of a new WV/NPDES permit for the same facility.

8.24. Transition and consolidation program for WV/NPDES and Chapter 22A permits.

8.24.1 Any WV/NPDES or Article 5A permit already in public notice pursuant to Article 5A on the effective date of these regulations shall continue to be processed by the Department of Natural Resources; however the Commissioner will be the permit issuing authority for any such permit recommended to be issued by the Department of Natural Resources.

8.24.2 Whenever a facility required a permit under both Chapter 22A and Article 5A, processing of two or more applications for those permits may be consolidated.

8.24.3 Whenever the permits are jointly noticed, the public hearings and informal conferences may be held on the same day.

8.24.4 The final permits may be issued together. They need not be issued together if in the judgment of the Commissioner, joint issuance would result in unreasonable delay in the issuance of one or more of the permits.

8.24.5 Whenever a facility or activity requires additional permits under both of the statutes covered by these regulations, the Commissioner may coordinate the expiration date(s) of the new permit(s) with the expiration dates(s) of the existing permit(s) so that all permits expire simultaneously. Processing of the subsequent applications for renewal permits may then be consolidated.

8.24.6 Any permittee who has either an NPDES, WV/NPDES or Article 5A permit must apply for reissuance in accordance with Section 4.1. If such permit expires within eighteen (18) months of the expiration of the Chapter 22A permit then such permit will automatically be given an extension to the expiration date of the surface mining permit upon written request by the permittee.

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8.24.7 Any permittee who has either an NPDES, WV/NPDES or Article 5A permit which will expire within eighteen (18) months after the expiration of a Chapter 22A permit for that facility must apply for the reissuance of the NPDES/ WV/NPDES or Article 5A permit when requesting renewal of the surface mining permit.

Section 9. Criteria and Standards; Variances

The following provisions of 40 C.F.R. are hereby incorporated by reference: 40 C.F.R. Part 125, Subparts A, C, D, E, F, G, H, J, and K.

Section 10. Federal Effluent Limitations Guidelines and Standards

The provisions of 40 C.F.R., Chapter I, Subchapter N, Parts 133, 401, 403, 434, and 436 are hereby incorporated by reference.

Section 11. Toxic Pollutant Effluent Standards

The provisions of 40 C.F.R. Part 129 are hereby incorporated by reference.



STATE OF WEST VIRGINIA

DEPARTMENT OF ENERGY

1615 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25311
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ARCH A. MOORE, JR.
GOVERNOR

KENNETH R. FAERBER
COMMISSIONER

February 20, 1987

FILED
FEB 20 PM 1:02
SECRETARY OF STATE

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Hechler:

Please find enclosed one copy of the proposed legislative rules for the West Virginia Department of Energy to be recorded and filed with your office. These rules were previously filed with you on January 12, 1987, and are being refiled today in modified form to meet the objections of the Legislative Rule-Making Review Committee which approved the rules, as modified, on February 9, 1987.

This submittal includes the notice of rule modification the proposed Division of Mines and Minerals NPDES rules, CFR exhibits for EPA rules incorporated by reference, a preamble to the rules, public notice and hearing documents, required fiscal note, public hearing record, and notice of agency approval. These rules form the basis for the State NPDES program of water pollution control for coal and other mineral resources, other than oil and gas.

I respectfully request that these documents be appropriately processed by your office. If you have any questions regarding this matter, please feel free to contact me at 348-3500.

Sincerely,

Roger T. Hall
Administrator

cc: M. E. Mowery, Esquire
Legislative Rule-Making Review Committee